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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 IN RE: PHENYLPROPANOLAMINE
7 (PPA) PRODUCTS LIABILITY
8 LITIGATION,
9
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MDL NO. 1407

ORDER GRANTING DEFEN-
DANTS' JUNE 4, 2004 MO-
TION TO DISMISS WITH
PREJUDICE FOR FAILURE
COMPLY WITH CMOs 15 AND
15A

11 This document relates to:

12 See Appendices A and B
13

14 On June 4, 2004 defendant Bayer Corporation, on behalf of
15 all defendants, filed a motion to dismiss with prejudice plain-
16 tiffs listed in Appendices A and B (among others) for failure to
17 comply with this court's Case Management Orders (CMOs) 15 and
18 15A. Having reviewed the briefs filed in support of and in
19 response to that motion, the court finds and rules as follows:

20 I. DISCUSSION

21 A. Standard For Dismissal for Failure to Comply with Court
22 Order

23 As the court has discussed on previous occasions, in deter-
24 mining whether to dismiss a claim for failure to comply with a
25 court order, a district court must consider five factors: (1) the
26 public's interest in expeditious resolution of litigation; (2)

ORDER

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1 the court's need to manage its docket; (3) the risk of prejudice
2 to the defendants; (4) the public policy favoring disposition of
3 cases on their merits; and (5) the availability of less drastic
4 sanctions. See May 7, 2004 Order of Dismissal With Prejudice for
5 Failure to Comply With CMO Nos. 15 and 15A, *citing Pagtalunan v.*
6 *Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). Under the same
7 analysis articulated in the May 7, 2004 order, the court finds
8 that absent special circumstances, dismissal in these cases is
9 warranted.

10 B. Whether the Original Multi-Plaintiff Complaints Listed
11 on Appendix B Should Be Dismissed

12 Defendants seek dismissal of the original multi-plaintiff
13 complaints listed on Appendix B attached hereto. Again, as this
14 court stated in its May 7, 2004 Order, dismissal of these com-
15 plaints is appropriate under CMO 15A, which provides that "after
16 all applicable deadlines set forth in CMO 15 have elapsed,
17 defendant may move for the dismissal of the original multi-
18 plaintiff complaint[.]" See May 7, 2004 Order, *citing* CMO No.
19 15A, ¶3. Plaintiffs do not dispute that "all applicable dead-
20 lines" have passed, and the motion to dismiss the original multi-
21 plaintiff complaints listed on Appendix B is granted.

22 Several plaintiffs appear to object to this aspect of
23 defendants' motion, claiming that their original complaint should
24 not be dismissed because they did, in fact, file timely individ-
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1 ual severed complaints.¹ To clarify, dismissal of the original
2 multi-plaintiff complaints is not a sanction, *per se*, for any
3 "violation" of CMOs 15 or 15A. It is simply an administrative
4 procedure the court has implemented to eliminate non-viable
5 complaints from its docket. The court is well aware that the
6 plaintiffs listed in footnote 1 have properly filed their indi-
7 vidual complaints. Nevertheless, dismissal of the original
8 multi-plaintiff complaints at this time is appropriate.

9 C. Other Individual Plaintiffs' Responses

10 Several plaintiffs have responded to defendants' motion
11 individually. The court will address these arguments in turn.

12 A number of plaintiffs were erroneously included on defen-
13 dants' original appendices, and this error has been brought to
14 the court's attention by both sides; the plaintiffs are not
15 included in this court's order.² A number of other objecting
16 plaintiffs belong to cases in which a stay has been entered.³

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18 ¹ See "Plaintiffs' Response in Opposition to Bayer's Motion
19 for Dismissal With Prejudice for Cases in Which Plaintiffs Filed
20 Untimely or No Individual Complaints Under CMOs 15 and 15A." The
21 original multi-plaintiff complaint, *Minnie Swift, et al. v. Bayer*
22 *Corporation, et al.*, C04-710, included plaintiffs Dorothy Bowie,
Robert Davis, Curtis Deason, Eddie Gayden, Ellen Ruth Grayson,
Susan Holloway, James Redmond, and Minnie Swift, all of whom
subsequently filed timely individual complaints.

23 ²These plaintiffs include Kathleen Kanouff, Kevin Fisher,
Amy George, Geneva Benton and Viola Pitt.

24 ³These plaintiffs include Letitia Bohahan, Janet Sportsman,
25 Gary Odom, Patsy Rawlings, Tracy Russell, and Shirley Sewell. A
26 number of other cases listed on defendants' original appendices
have also been stayed, and the motion as to these cases is

1 All motions as to these cases have been stricken pursuant to the
2 court's July 16, 2004 minute order, and both parties' arguments
3 as to these plaintiffs are therefore moot.

4 Finally, a number of plaintiffs have filed essentially
5 identical oppositions to defendants' motion, asserting a number
6 of arguments.⁴ None of these arguments are availing; indeed, one
7 of them approaches what the court considers Rule 11 frivolity.
8 Specifically, plaintiffs argue that since CMO 15A allows a
9 plaintiff 30 days to cure a timely individual complaint to which
10 a defendant has objected to as deficient, plaintiffs here are
11 entitled to a 30-day "safe harbor" after defendants' objection
12 (in the form of this motion) in which to file their first indi-
13 vidual severed complaint. Almost (but unfortunately not quite)
14 needless to say, that provision applies to timely-filed but
15 deficient complaints, and to provide for the correction thereof,
16 and not even arguably to complaints that were filed grossly late
17 or not at all.

18 The court previously addressed the remainder of plaintiffs'
19 arguments in its May 7, 2004 Order, and will not reiterate the
20 analysis here. In short, the court rejects plaintiffs' assertion
21 that dismissal is too harsh a sanction for failure to comply with
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23 stricken as well. This order does not relate to these cases,
24 either, and they are also not included on the attached
25 appendices.

26 ⁴These plaintiffs include most of those listed on Appendix
A.

1 the court's order. Plaintiffs filed their complaints, if at all,
2 months late. Plaintiffs' only apparent excuse for this failure
3 is that their original multi-plaintiff complaint adequately put
4 defendants on notice of the claims against them. Plaintiffs'
5 assertion in this regard is extremely untimely and obviously *ad*
6 *hoc*. More to the point, CMOs 15 and 15A simply did not contem-
7 plate this or any other unenumerated exception, and plaintiffs
8 have given the court no reason to believe that such exception
9 should be read in given the obvious prejudice suffered by defen-
10 dants and the importance of proper case management to this highly
11 complex MDL. Defendants' motion as to these plaintiffs, as
12 listed on Appendix A, is granted.

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14 II. CONCLUSION

15 Defendants' motion as to those cases listed in Appendix B is
16 GRANTED, and these multi-plaintiff complaints are DISMISSED with
17 prejudice in their entirety. The motion as to those cases listed
18 in Appendix A, which includes untimely-filed individual com-
19 plaints, is also GRANTED, and these cases are DISMISSED as well.

20 DATED at Seattle, Washington this 23rd day of August, 2004.
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22 s/ Barbara Jacobs Rothstein
23 BARBARA JACOBS ROTHSTEIN
24 UNITED STATES DISTRICT JUDGE
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Revised Appendix A – Plaintiffs That Filed an Untimely CMO-15 Complaint

	Plaintiff Name	Case Name	State	MDL Case No.	Former MDL Case No.	Docket Date	Date Filed
1.	Anderson, Jr.- James	<i>James Anderson, Jr. v. Bayer Corp. (Originally in James E. Anderson, et al. v. Bayer Corp., et al.)</i>	MS	C04-1058	C04-0022	02/11/2004	05/07/2004
2.	Anderson, James E.	<i>James E. Anderson. v. Bayer Corp. (Originally in James E. Anderson, et al. v. Bayer Corp., et al.)</i>	MS	C04-1449	C04-0022	02/11/2004	06/23/2004
3.	Anderson- John R.	<i>John R. Anderson v. Bayer Corp. (Originally in James E. Anderson, et al. v. Bayer Corp., et al.)</i>	MS	C04-1059	C04-0022	02/11/2004	05/07/2004
4.	Archer- Jack	<i>Jack Archer v. Bayer Corp. (Originally in James E. Anderson, et al. v. Bayer Corp., et al.)</i>	MS	C04-1060	C04-0022	02/11/2004	05/07/2004
5.	Bailey- Dorothy	<i>Dorothy Bailey v. Bayer Corp. et al. (Originally in James E. Anderson, et al. v. Bayer Corp., et al.)</i>	MS	C04-1062	C04-0022	02/11/2004	05/07/2004
6.	Bailey- Louis	<i>Louis Bailey v. Bayer Corp (Originally in James E. Anderson, et al. v. Bayer Corp., et al.)</i>	MS	C04-1061	C04-0022	02/11/2004	05/07/2004
7.	Barkley- Sheila	<i>Sheila Barkley v. Block, et al. (Originally in James E. Anderson, et al. v. Bayer Corp., et al.)</i>	MS	C04-1063	C04-0022	02/11/2004	05/07/2004
8.	Bradham- Kathy	<i>Kathy Bradham v. Bayer Corp. (Originally in James E. Anderson, et al. v. Bayer Corp., et al.)</i>	MS	C04-1064	C04-0022	02/11/2004	05/07/2004
9.	Butler- Eddie	<i>Eddie Butler v. Bayer Corp. (Originally in James E. Anderson, et al. v. Bayer Corp., et al.)</i>	MS	C04-1065	C04-0022	02/11/2004	05/07/2004
10.	Carter- Ethel	<i>Ethel Carter v. Bayer Corp. (Originally in James E. Anderson, et al. v. Bayer</i>	MS	C04-1066	C04-0022	02/11/2004	05/07/2004

Revised Appendix A – Plaintiffs That Filed an Untimely CMO-15 Complaint

	Plaintiff Name	Case Name	State	MDL Case No.	Former MDL Case No.	Filed Date	Date Filed
		<i>Corp., et al.)</i>					
11.	Dale- Earnestine	<i>Earnestine Dale v. Bayer Corp.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1068	C04-0022	02/11/2004	05/07/2004
12.	Elmore- Elizabeth	<i>Elizabeth Elmore v. Bayer Corp.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1070	C04-0022	02/11/2004	05/07/2004
13.	Gooch- Emma	<i>Emma Gooch v. Block</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1071	C04-0022	02/11/2004	05/07/2004
14.	Green – Robert	<i>Robert Green v. Wyeth</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1450	C04-0022	02/11/2004	06/23/2004
15.	Harris- Daisy	<i>Daisy Harris v. Bayer Corp., et al.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1048	C04-0022	02/11/2004	05/07/2004
16.	Henard- Leeida	<i>Leeida Henard v. Bayer Corp.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1072	C04-0022	02/11/2004	05/07/2004
17.	Hendry- Robert	<i>Robert Hendry v. AHP</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1073	C04-0022	02/11/2004	05/07/2004
18.	Jacob- Dollas	<i>Dollas Jacob v. Bristol Myers Squibb</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1074	C04-0022	02/11/2004	05/07/2004
19.	King- Ollie L.	<i>Ollie L. King v. Bayer Corp.</i> (Originally in <i>James E. Anderson, et al. v. Bayer</i>	MS	C04-1075	C04-0022	02/11/2004	05/07/2004

Revised Appendix A – Plaintiffs That Filed an Untimely CMO-15 Complaint

	Plaintiff Name	Case Name	State	MDL Case No.	Family VIDE Case No.	Order Date	Date Filed
		<i>Corp., et al.)</i>					
20.	Lang- James	<i>James Lang v. Block, et al. (Originally in James E. Anderson, et al. v. Bayer Corp., et al.)</i>	MS	C04-1076	C04-0022	02/11/2004	05/07/2004
21.	Magee-Merlean	<i>Merlean Magee v. Elan, et al. (Originally in James E. Anderson, et al. v. Bayer Corp., et al.)</i>	MS	C04-1078	C04-0022	02/11/2004	05/07/2004
22.	Magee-William C	<i>William C Magee v. Bayer Corp, et al. (Originally in James E. Anderson, et al. v. Bayer Corp., et al.)</i>	MS	C04-1077	C04-0022	02/11/2004	05/07/2004
23.	Maier – Glenn	<i>Glenn and Paula Maier v. Bayer AG</i>	MS	C04-1451	C04-0022	02/11/2004	06/23/2004
24.	Maier – Paula	<i>Glenn and Paula Maier v. Bayer AG</i>	MS	C04-1451	C04-0022	02/11/2004	06/23/2004
25.	Marshall-Mildred	<i>Mildred Marshall v. Bayer Corp. (Originally in James E. Anderson, et al. v. Bayer Corp., et al.)</i>	MS	C04-1034	C04-0022	02/11/2004	05/07/2004
26.	Merrick – Belain	<i>Belain Merrick v. Block (Originally in James E. Anderson, et al. v. Bayer Corp., et al.)</i>	MS	C04-1255	C04-0022	02/11/2004	05/19/2004
27.	Mitchell-Valerie	<i>Valerie Mitchell v. Block, et al. (Originally in James E. Anderson, et al. v. Bayer Corp., et al.)</i>	MS	C04-1035	C04-0022	02/11/2004	05/07/2004
28.	Netterville – Charles	<i>Charles and Melanie Netterville v. Procter & Gamble, et al.</i>	MS	C04-1256	C04-0022	02/11/2004	05/19/2004
29.	Netterville – Melanic	<i>Charles and Melanie Netterville v. Procter & Gamble, et al.</i>	MS	C04-1256	C04-0022	02/11/2004	05/19/2004
30.	Nickelson-Veronica	<i>Veronica Nickelson v. McNeil (Originally in James E. Anderson, et al. v. Bayer</i>	MS	C04-1036	C04-0022	02/11/2004	05/07/2004

Revised Appendix A – Plaintiffs That Filed an Untimely CMO-15 Complaint

Case No.	Plaintiff Name	Case Name	State	MDL Case No.	MDL Case No.	Filed Date	Date Filed
		<i>Corp., et al.)</i>					
31.	Pace- LilAnn	<i>LilAnn Pace v. Wyeth, et al.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1037	C04-0022	02/11/2004	05/07/2004
32.	Pickering- Joy	<i>Joy Pickering v. Block, et al.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1038	C04-0022	02/11/2004	05/07/2004
33.	Pritchard-Elizabeth	<i>Elizabeth Pritchard v. Wyeth</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1039	C04-0022	02/11/2004	05/07/2004
34.	Schuetz-Edward	<i>Edward Schuetz v. Bayer Corp., et al.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1040	C04-0022	02/11/2004	05/07/2004
35.	Smith- Levi	<i>Levi Smith v. Bayer Corp.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1041	C04-0022	02/11/2004	05/07/2004
36.	Thompson-Willie	<i>Willie Thompson v. Bayer Corp.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1042	C04-0022	02/11/2004	05/07/2004
37.	Trott- Brenda	<i>Brenda Trott v. Wyeth, et al.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1043	C04-0022	02/11/2004	05/07/2004
38.	Twynner-Sharon	<i>Sharon Twynner v. Bayer Corp., et al.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1044	C04-0022	02/11/2004	05/07/2004
39.	Vaughn - Alfanette	<i>Alfanette Vaughn v. GlaxoSmithKline</i>	MS	C04-1346	C04-0022	02/11/2004	06/8/2004
40.	Warren- Della	<i>Della Warren v. Bayer Corp., et al.</i>	MS	C04-1045	C04-0022	02/11/2004	05/07/2004

Revised Appendix A – Plaintiffs That Filed an Untimely CMO-15 Complaint

	Plaintiff Name	Case Name	State	MDL Case No.	Former MDL Case No.	Filed in MDL	Filed in CMO-15
		(Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)					
41.	Washington-Lois	<i>Lois Washington v. Bayer Corp., et al.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1046	C04-0022	02/11/2004	05/07/2004
42.	Washington-Shawanda	<i>Shawanda Washington v. Bayer Corp.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1047	C04-0022	02/11/2004	05/07/2004
43.	Welch-Charles	<i>Charles Welch v. Bayer Corp.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1049	C04-0022	02/11/2004	05/07/2004
44.	Wells- Patricia	<i>Patricia Wells v. Bayer Corp., et al.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1050	C04-0022	02/11/2004	05/07/2004
45.	Wicks- Martha	<i>Martha Wicks v. Wyeth</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1051	C04-0022	02/11/2004	05/07/2004
46.	Williams-Nathaniel	<i>Nathaniel Williams v. Bayer Corp.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1053	C04-0022	02/11/2004	05/07/2004
47.	Wilson- Roger Dale	<i>Roger Dale Wilson v. Bayer Corp.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1054	C04-0022	02/11/2004	05/07/2004
48.	Woods-Delores	<i>Delores Woods v. Bayer Corp.</i> (Originally in <i>James E. Anderson, et al. v. Bayer Corp., et al.</i>)	MS	C04-1055	C04-0022	02/11/2004	05/07/2004

Revised Appendix B – List of Original Multi-Plaintiff Cases

	Case Name	State	MDL Case No.	Date Docketed
1.	<i>Anderson, James E., et al. v. Bayer Corp., et al.</i>	MS	C04-0022	02/11/2004
2.	<i>Bryant, Willey O., et al. v. Wyeth, et al.</i>	MS	C04-0720	04/12/2004
3.	<i>Catchings, Sylvia et al. v. Bayer Corp., et al.</i>	MS	C04-0711	04/08/2004
4.	<i>Claiborne, Maria, et al. v. GSK Consumer Health</i>	MS	C04-0018	02/02/2004
5.	<i>Cowart, Elliot, et al. v. Bayer Corp., et al.</i>	MS	C03-2484	08/18/2003
6.	<i>Swift, Minnie, et al. v. Bayer Corp., et al.</i>	MS	C04-0710	04/08/2004
7.	<i>Thigpen, James, et al. v. Bayer Corp., et al.</i>	MS	C04-0019	02/04/2004